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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Implementation of the Local Competition ) CC Docket No. 96-98/  
Provisions of the Telecommunications Act )  
of 1996 )

**AT&T Comments on ITC^DeltaCom's Petition for Waiver**

Pursuant to the Commission's Public Notice,<sup>1</sup> AT&T Corp. ("AT&T") submits the following comments on ITC^DeltaCom's petition seeking a waiver of the co-mingling restriction of the Commission's *Supplemental Order Clarification*.<sup>2</sup> The limitations imposed in that Order, of which the co-mingling restriction is only one, effectively prevent competitive carriers from obtaining unbundled access to combinations of the loop and transport elements, even when they are used to provide local exchange services.

ITC^DeltaCom (at n.3) acknowledges that it vigorously opposes *all* of the Commission's use restrictions on access to combinations of the loop and transport network elements, not merely the co-mingling restriction. ITC^DeltaCom is not alone. AT&T and virtually all other competitive carriers agree with ITC^DeltaCom that such restrictions are unlawful and should be eliminated immediately. Moreover, since:

<sup>1</sup> DA 01-2030, released August 28, 2001

<sup>2</sup> FCC 00-183, released June 2, 2000.

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(i) the legal issues regarding these use restrictions have been pending before the Commission ever since it issued the *UNE Remand Order* in November 1999<sup>3</sup>;

(ii) the Commission's *Supplemental Order* promised to resolve the use restriction issue "on or before June 30, 2000"<sup>4</sup>;

(iii) the *Supplemental Order Clarification* extended the period for resolving this important issue, so that an *additional* 14 months have now elapsed without a decision; and

(iv) all interested parties have fully re-briefed the issue in the interim,

there is no reason why ITC^DeltaCom's waiver request should be necessary at this time. Thus, although AT&T does not oppose the instant Petition, it urges the Commission to moot the need for this or any other waiver by issuing its decision on the core underlying issue based on the substantial record that has already been amassed.<sup>5</sup> That record irrefutably demonstrates that all use restrictions on loop transport combinations, including the co-mingling restriction, substantially impair competitors' ability to offer the services they seek to provide and place them at a significant competitive disadvantage compared to the incumbent LECs.<sup>6</sup>

In all events, the Commission must recognize that even if the instant waiver will assist ITC^DeltaCom, it will have *de minimis* effect on the overall market for one simple

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<sup>3</sup> FCC 99-238, released November 5, 1999.

<sup>4</sup> FCC 99-370, released November 24, 1999, ¶ 4.

<sup>5</sup> AT&T also notes that WorldCom's pending waiver petition in this same docket has been in limbo for a significant period of time. It would be odd if the Commission granted ITC^DeltaCom's waiver request without also addressing WorldCom's longstanding petition at the same time.

<sup>6</sup> See, e.g., AT&T's Comments dated April 5, 2001 and Reply dated April 30, 2001 in CC Docket No. 96-98.

reason: it does not relieve the basic anticompetitive effects of the current “interim” use restrictions, which have now been in effect for nearly two years. Therefore, even if the waiver is granted it will not allow most competitors to lease loop and transport UNE combinations in a manner that allows them to compete on an equal footing with the ILECs.

Specifically, although the waiver would provide modest benefits for ITC^DeltaCom, it would have no impact at all on AT&T and similarly situated carriers. As AT&T has shown, AT&T cannot take advantage of the “safe harbors” described in the *Supplemental Order Clarification*, even in cases where it actually complies with the Commission’s “significant local service” requirements, because (i) compliance requires carriers to have customer information that is typically not available to them; and (ii) AT&T cannot verify such compliance due to the fact that its systems are not designed to track usage in the manner required by the Commission’s rules.<sup>7</sup> As a result, AT&T and similarly situated carriers -- and their customers -- continue to be unfairly punished by rules that violate both the requirements of the Act and the Commission’s own principles.

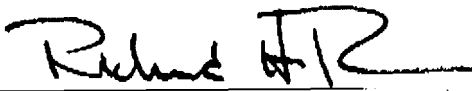
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<sup>7</sup> See Declaration of Alice Marie Carroll and Cynthia S. Rhoads, appended to AT&T’s April 5, 2001 comments in CC Docket No. 96-98.

Therefore, although AT&T does not oppose the requested waiver, the need for such action should have been obviated long ago. AT&T urges the Commission promptly to issue an order striking all restrictions on the use of loop and transport combinations to provide special access services.

Respectfully submitted,

AT&T Corp.

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